

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:

)
) **DIVISION OF WATER**
) **POLLUTION CONTROL**
)

**TYREE GENERAL
CONTRACTORS**

RESPONDENT

)
)
)
) **CASE NO. WPC07-0210**
)
)

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control (hereinafter the "division") by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

II.

Tyree General Contractors LLC, (hereinafter the "Respondent") is a limited liability corporation licensed to conduct business in Tennessee. The Respondent is the owner/developer of Long Beech Heights, (hereinafter the "site") a residential development on Long Hollow Pike in Sumner County. Service of process may be made on the Respondent through its Registered Agent, Barry T. Tyree, 100 Crooked Creek Lane, Hendersonville, Tennessee, 37075.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of the Water Quality Control Act of 1977 (hereinafter the "Act"), Tennessee Code Annotated (T.C.A.) §69-3-101 et seq, has occurred or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as Chapters 1200-4-3–4 of the *Official Compilation: Rules and Regulations of the State of Tennessee*. Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the

director of the division any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a "person" as defined by T.C.A. § 69-3-103(20) and, as herein described, has violated the Act.

V.

Drakes Creek and its unnamed tributaries as referred to herein, are "waters of the state" as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, "Use Classifications for Surface Waters," Drakes Creek and its unnamed tributaries have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

VI.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the "TNCGP") may be obtained by

submittal of a Notice of Intent (NOI), a site-specific Storm Water Pollution Prevention Plan (SWPPP) and an appropriate fee.

VII.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

FACTS

VIII.

On January 14, 2004, the Respondent submitted a NOI and an appropriate fee to obtain coverage under the TNCGP. On January 15, 2004, the division issued the Respondent coverage under the TNCGP. The coverage became effective January 15, 2004, and expires upon the division’s approval of a Notice of Termination or upon the expiration of the general permit on May 30, 2010. The permit authorizes the Respondent to discharge storm water runoff associated with construction activity to Drakes Creek, in accordance with the TNCGP terms and conditions.

IX.

On June 1, 2007, the division conducted a complaint investigation at the site. Division personnel observed that Erosion Prevention and Sediment Control measures (EPSC) at the source of the complaint had been repaired and maintained, but further inspection of the site revealed areas of non-compliance. Division personnel noted that land disturbance activity was occurring at an additional non-permitted phase of the development. EPSC measures had not been installed in this area and sediment from the area had washed onto an adjoining property. Division personnel noted that fill material had been placed into a jurisdictional pond hydrologically connected to waters of the state. As well, division personnel observed significant alterations to a stream on site, the banks of the stream were bare and unstable and the channel had been relocated. Sediment deposits were present in the stream, and the channel had been lined with rip rap. During the inspection, division personnel met with the Respondent who provided the Notice of Coverage (NOC) and SWPPP for Phase I at the site.

X.

On July 13, 2007, the division issued a Notice of Violation (NOV) to the Respondent for the violations observed during the June 1, 2007, site visit. The NOV required the Respondent to immediately install and maintain EPSC measures to ensure no additional sediment leaves the site. The NOV also required the Respondent to submit a NOI, SWPPP, and appropriate fee to obtain coverage for the additional phase of the development. In addition, the division required the Respondent to submit a stream

restoration plan to address the unauthorized alterations. The division requested that the plan include methods and means to remove sediment from the stream and details on how the stream banks could be restored to their original condition.

XI.

To date the division has not received a NOI for the additional phase of the development or a stream restoration plan from the Respondent.

XII.

During the course of investigating this matter, the division incurred damages in the amount of TWO HUNDRED ELEVEN DOLLARS AND SEVENTY-EIGHT CENTS (\$211.78).

VIOLATIONS

XIII.

By physically altering waters of the state without authorization under an ARAP, and by conducting construction activities without authorization under the TNCGP, the Respondent has violated T.C.A. §§ 69-3-108 (a) and (b) and 69-3-114(b), which state:

§ 69-3-108(a):

(a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit

with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XIV.

By discharging sediment into waters of the state that resulted in a condition of pollution, the Respondent has violated T.C.A. §§69-3-114(a), referenced below, and 69-3-114(b), as referenced above.

§ 69-3-114(a):

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 109, 115-16, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent:

1. The Respondent shall implement appropriate EPSC measures to ensure that no eroded material leaves the site and enters waters of the state. Documentation that EPSC measures have been implemented is to be sent within 15 days of receipt of this Order and Assessment to the manager of the Division's Nashville Environmental Field Office (N-EFO) at 711 RS Gass Blvd, Nashville, Tennessee, 37243.

2. The Respondent shall, within THIRTY (30) DAYS of receipt of this Order and Assessment, submit a NOI, SWPPP, and appropriate fee to obtain coverage under the TNCGP, this shall be sent to the N-EFO and a copy shall also be submitted to the manager of the division's Enforcement and Compliance Section (E&C) located at 401 Church Street, L&C Annex 6th Floor, Nashville, Tennessee, 37243.
3. The Respondent shall, within THIRTY (30) DAYS of receipt of this Order and Assessment, submit a stream restoration plan for the impacted portions of the unnamed tributary to Drakes Creek at the site. The plan shall include the specific methods to be used in removing the sediment from the creek, with details pertaining to restoring the stream banks to their original condition. The plan shall be submitted to the manager of the division's N-EFO.
4. The Respondent shall, within THIRTY (30) DAYS of division approval, complete the activities outlined in the stream restoration plan for the unnamed tributary to Drakes Creek and notify the manager of the division's N-EFO.
5. The Respondent shall maintain professionally designed EPSC measures until final site stabilization.
6. The Respondent is hereby assessed a CIVIL PENALTY in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00), payable as follows:

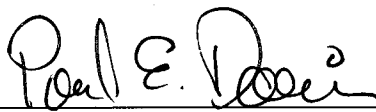
- a. The Respondent shall, within 30 DAYS of receipt of this Order and Assessment, pay to the division FIVE THOUSAND DOLLARS (\$5,000.00).
- b. The Respondent shall pay TWO THOUSAND DOLLARS (\$2,000.00) to the division in the event the Respondent fails to comply with Item 1 above, to be paid within 30 days of default.
- c. The Respondent shall pay TWO THOUSAND DOLLARS (\$2,000.00) to the division in the event the Respondent fails to comply with Item 2 above, to be paid within 30 days of default.
- d. The Respondent shall pay TWO THOUSAND DOLLARS (\$2,000.00) to the division in the event the Respondent fails to comply with Item 3 above, to be paid within 30 days of default.
- e. The Respondent shall pay TWO THOUSAND DOLLARS (\$2,000.00) to the division in the event the Respondent fails to comply with Item 4 above, to be paid within 30 days of default.
- f. The Respondent shall pay TWO THOUSAND DOLLARS (\$2,000.00) to the division in the event the Respondent fails to comply with Item 5 above, to be paid within 30 days of default.
- g. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

7. The Respondent is hereby assessed DAMAGES in the amount of TWO HUNDRED ELEVEN DOLLARS AND SEVENTY-EIGHT CENTS (\$211.78) payable within THIRTY (30) DAYS of receipt of this Order and Assessment.

The director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on this 21st day of November 2007.



PAUL E. DAVIS, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109, 115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 et seq of the Uniform Administrative Procedures Act, and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel

representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made payable to “Treasurer, State of Tennessee,” and sent to the Tennessee Department of Environment and Conservation, Division of Fiscal Services – Consolidated Fee Section, 14th Floor L&C Tower, 401 Church Street, Nashville, TN 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. All payments and correspondence should include the Respondent’s name and case number as shown on the first page of this Order and Assessment.